IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

WP(C).No. 19097 of 2005(W)

PETITIONER:

T.V. PAULOSE, S/O. LATE THANIKODAM
VARKEY, PANTHALMPADOM, PANNIYANKARA POST,
ALATHUR TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.G.HARIHARAN

RESPONDENTS:
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1. **TAHSILDAR (R.R), ALATHUR,**
   PALAKKAD DISTRICT.

2. **VILLAGE OFFICER, VADAKKANCHERRY**
   VILLAGE, PALAKKAD DISTRICT.

3. **T.V. KURIAKOSE, S/O. VARKEY**
   HILL PRODUCE DEALER, ALATHUR TALUK,
   VADAKKANCHERRY, PALAKKAD DISTRICT.

4. **SALES TAX OFFICER, ALATHUR,**
   PALAKKAD DISTRICT.

BY ADV. SRI.P.N.KRISHNANKUTTY ACHAN(SR.)
SRI.K.MOHANAKANNAN
BY GOVERNMENT PLEADER SRI.C.K.GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO. 19097/2005

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE JUDGMENT IN OP. NO.26598/02 DT.17.9.02 PASSED BY THIS HONOURABLE COURT.

EXT.P2:- COPY OF THE MAHZAR DT. 7.8.02 PREPARED BY THE VILLAGE OFFICER.

EXT.P3:- COPY OF THE REQUISITION DT. 30.9.02 FIOLED BY THE PETITIONER BEFORE THE TAHSILDAR.

EXT.P4:- COPY OF THE COMMUNICATION DT. 8.10.02 ISSUED BY THE TAHSILDAR ALATHUR.

EXT.P5:- COPY OF THE JUDGMENT DT. 14.11.02 MADE IN OP. 33907/02 OF THE HONOURABLE HIGH COURT OF KERALA.

EXT.P6:- COPY OF THE RECEIPT DT. 5.5.03 EVIDENCING PAYMENT OF RS. I LAKHS BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P7:- COPY OF THE APPELLATE ORDER PASSED BY THE APPELLATE ASSISTANT COMMISSIONER , COMMERCIAL TAXES, PALAKKAD.

EXT.P8:- COPY OF THE ORDER PASSED IN TA. NO.252/03 AND 13 OTHER APPEALS BY THE KERALA AGRICULTURAL INCOME TAX AND SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, PALAKKAD DT. 20.1.04.

EXT.P9:- COPY OF THE ORDER DT. 28.2.05 PASSED BY THE SALES TAX OFFICER, ALATHUR FIXING THE TAX LIABILITY ON THE 3RD RESPONDENT

EXT.P10:- COPY OF THE DETAILS OF THE TAX LIABILITY AND THE INTEREST DUE BY THE 3RD RESPONDENT TOWARDS TAX LIABILITY TO THE RESPONDENT.

EX.T.R3(a):- COPY OF THE APPEAL FILED WITH PETITION BY THE 3RD RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

tss

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.19097 of 2005

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Dated this the 20th day of August, 2007.

JUDGMENT

Dispute between petitioner and third respondent is as to who has carried on business and consequently liable for payment of sales tax. Though petitioner was originally assessed and part recovery was made after remand in appeal, assessment is made in the name of third respondent who is none other than petitioner's brother. In recovery, petitioner's movables are also attached. Counsel for third respondent submitted that petitioner is a registered dealer and third respondent has filed appeals against revised assessments after remand. According to the petitioner, the person who actually carried on business is the third respondent, even though registration was retained in the name of the petitioner. In any case this being a factual dispute, it is for the appellate authority to decide the matter in appeals filed by third respondent depending on findings in the first round and in the revised assessment and after allowing the petitioner and third respondent to adduce evidence. The W.P. is accordingly disposed of directing respondents 1 and 2 to recover balance arrears from third respondent, if stay is not granted and if stay is granted, subject to stay orders if any

produced by third respondent. Refund to petitioner will be withheld until disposal of appeals by the appellate authority and should be granted only if the assessments are sustained in the name of third respondent. The movables attached from petitioner should be released to the petitioner on petitioner depositing either it's value subject to claim of refund or on furnishing Bank Guarantee for the value of goods, so that goods are not destroyed in the custody of recovery authorities.

C.N.RAMACHANDRAN NAIR
Judge

pms